IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 357 of 2007()

CC.1106/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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PETITIONER:

RAJEEV C.N., S/O. NARAYANAN,
CHATHAMPILLY HOUSE, NADAVARAMBA,
IRINJALAKUDA, THRISSUR DIST.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE,
WADAKKANCHERRY POLICE STATION, PALAGHAT DIST.

2. GEORGE PHILIP, S/O. PHILIP,
KALLINGAL PADATHU ELANJIKKEL HOUSE, KANNAMBRA,
ALATHUR TALUK, PALAGHAT DIST.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 357 OF 2007

Dated this the 20th day of February, 2007

ORDER

Cognizance has been taken for the offences punishable under Secs.417, 420 and 422 of the IPC against the petitioner on the basis of a final report submitted by the police. Investigation commenced on the basis of a complaint filed by the de facto complainant before the learned Magistrate. The de facto complainant had earlier filed a complaint under Sec.138 of the N.I. Act and the petitioner was found not guilty and acquitted in the said case by the learned Magistrate who made certain specific observations about the real remedy available to the complainant. It is thereafter that the complaint was filed before the police. Investigation was conducted and the final report was filed.

2. The learned counsel for the petitioner submits that the petitioner has already entered appearance before the learned Magistrate. It is the case of the petitioner that the allegations do not constitute the offences alleged against him

and that, at any rate, a further prosecution is barred under Sec.300 of the Cr.P.C.

3. I am certainly of opinion that the petitioner who has already entered appearance before the learned Magistrate must raise his contentions before the learned Magistrate at the stage of Sec.239/240 of the Cr.P.C. I find absolutely no reason in the given circumstances to invoke the powers under Sec.482 of the Cr.P.C. and prematurely terminate the proceedings against the petitioner. Of course, the petitioner's plea for discharge under Sec.239 of the Cr.P.C. shall have to be considered by the learned Magistrate and appropriate decision taken in the matter. I do further observe that the personal appearance of the petitioner need not be ritualistically insisted until the learned Magistrate takes a decision on the question of discharge under Sec.239 of the Cr.P.C. Till then, the petitioner can be permitted to appear through his counsel before the learned Magistrate.

4. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge